

Exhibit 10

COPY

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

CMG WORLDWIDE, INC., an Indiana
 Corporation, and MARILYN MONROE
 LLC, a Delaware Limited Liability
 Company,

Plaintiffs,

v.

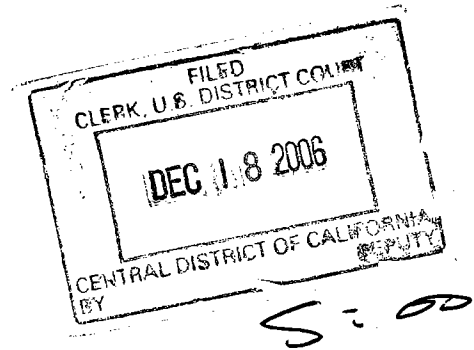
TOM KELLEY STUDIOS, INC., a
 California Corporation,

Defendant.

CASE NO.
 CV-05-02200-MMM (Ex)

**SUPPLEMENTAL DECLARATION OF
 AMNON Z. SIEGEL IN SUPPORT OF
 PLAINTIFFS' SUPPLEMENTAL BRIEF
 IN SUPPORT OF PLAINTIFFS'
 OPPOSITION TO DEFENDANTS'
 MOTION FOR SUMMARY
 JUDGMENT**

[Plaintiffs' Supplemental Brief in Support of
 Plaintiffs' Opposition to Defendants'
 Motion for Summary Judgment;



Supplemental Declaration of Anna Strasberg
and exhibits attached thereto; Declaration of
Daniel Siegel and exhibits attached thereto,
filed concurrently herewith]

Honorable Margaret M. Morrow

CMG WORLDWIDE, INC., an Indiana
Corporation, and MARILYN MONROE,
LLC, a Delaware Limited Liability
Company,

Plaintiffs,

v.

THE MILTON H. GREENE
ARCHIVES, INC.,

Defendant.

THE MILTON H. GREENE
ARCHIVES, INC.,

Plaintiff,

v.

CMG WORLDWIDE, INC., an Indiana
Corporation, and MARILYN MONROE,
LLC, a Delaware Limited Liability
Company, ANNA STRASBERG, an
individual,

Defendants.

TOM KELLEY STUDIOS, INC., a
California Corporation,

Plaintiff,

v.

CMG WORLDWIDE, INC., an Indiana
Corporation, and MARILYN MONROE,
LLC, a Delaware Limited Liability
Company, ANNA STRASBERG, an
individual,

Defendants.

SUPPLEMENTAL DECLARATION OF AMNON Z. SIEGEL

I, AMNON Z. SIEGEL, declare as follows:

1. I am an attorney at law, duly licensed to practice before all of the Courts of the State of California. I am an associate at Gibson, Dunn, and Crutcher LLP in Los Angeles, California, and I represent Plaintiff Marilyn Monroe, LLC ("MMLLC") and cross-defendant Anna Strasberg ("Strasberg") in this consolidated action. I have personal knowledge of the matters stated herein and could, and would, testify competently thereto if necessary.

2. Attached hereto as Exhibit A is a true and correct copy of an advertisement featuring Marilyn Monroe for Lustre-Crème Shampoo printed from the webpage: http://www.allposters.com/-sp/Luster-Creme-Posters_i1113509_.htm.

3. Attached hereto as Exhibit B is a true and correct copy of an advertisement featuring Marilyn Monroe for a make-up product called "New-U" printed from the webpage: http://www.allposters.com/-sp/Marilyn-Monroe-New-U-Posters_i995037_.htm.

4. Attached hereto as Exhibit C is a true and correct copy of an advertisement featuring Marilyn Monroe for LAH Jewelers printed from the webpage: http://www.allposters.com/-sp/LAH-Jewelers-Posters_i1113628_.htm.

5. Attached hereto as Exhibit D is a true and correct copy of excerpts from the Legislative Intent Service's History Report and Analysis regarding California Civil Code Section 990 (now Cal. Civ. Code § 3344.1). Specifically, attached hereto as Exhibit D is a true and correct copy of a letter, dated March 5, 1984, from the sponsor of the bill in the Senate, Senator William Campbell, to the Motion Picture Association of America and a memorandum in support of the bill. The memorandum in support of the bill circulated by Senator Campbell described the state of the law in California on the issue of whether a post-mortem right of publicity existed as follows:

In summary, the law in California with respect to the descendability of the right of publicity is one of the following: (1) the right does not

1 descend, whether or not exploited during the person's lifetime; (2) the
2 right descends in gross if it is exploited during the person's lifetime; or
3 (3) the right descends if it is exploited during the person's lifetime, but
4 only with respect to the types of exploitation engaged in by the person
5 during his or her lifetime.

6 (memo attached to March 5, 1984 letter from Sen. William Campbell to Motion
7 Picture Association of America). The letter from Senator Campbell further
8 states, "California law regarding the descendability of the right of publicity is in
9 a confused state" because of the ambiguity of the *Lugosi* decision and "[i]t is
10 this ambiguity that [the amended statute] seeks to eliminate." The bill's sponsor
11 also indicates in the letter that the amended statute "adopts of the philosophy"
12 of the dissent of Chief Justice Bird in the *Lugosi* case.

13 6. Attached hereto as Exhibit E is a true and correct copy of web
14 pages printed from: http://www.ss.ca.gov/cgi-bin/sii_search.cgi on the
15 California Secretary of State's California Business Portal relating to Successor-
16 in-Interest concerning Albert Einstein. The webpage shows that the claimant of
17 Mr. Einstein's posthumous right of publicity, the Hebrew University of
18 Jerusalem, was apparently transferred this right by will. The webpage also
19 states that Mr. Einstein died on April 18, 1955.

20 7. Attached hereto as Exhibit F is a true and correct copy of a web
21 page printed from: <http://www.albert-einstein.org/history5.html> concerning the
22 "History of the Estate of Albert Einstein."

23 8. Attached hereto as Exhibit G is a true and correct copy of a web
24 page printed from: [http://www.forbes.com/2006/10/20/tech-](http://www.forbes.com/2006/10/20/tech-media_06deadcelebs_cx_pf_top-earning-dead-celebrities_5.html)
25 [media_06deadcelebs_cx_pf_top-earning-dead-celebrities_5.html](http://www.forbes.com/2006/10/20/tech-media_06deadcelebs_cx_pf_top-earning-dead-celebrities_5.html). The web
26 page states: "Rights to Einstein's name belong to the Hebrew University of
27 Jerusalem" This web page is from an article by Forbes magazine regarding
28 the top-earning dead celebrities, which can be obtained from:

1 [http://www.forbes.com/2006/10/23/tech-media_06deadcelebs_cx_pk_top-](http://www.forbes.com/2006/10/23/tech-media_06deadcelebs_cx_pk_top-earning-dead-celebrities_land.html)
2 [earning-dead-celebrities_land.html](http://www.forbes.com/2006/10/23/tech-media_06deadcelebs_cx_pk_top-earning-dead-celebrities_land.html). Mr. Einstein was ranked fifth in Forbes's
3 list.

4 9. Attached hereto as Exhibit H is a true and correct copy of a web
5 page printed from: http://www.ss.ca.gov/cgi-bin/sii_search.cgi on the
6 California Secretary of State's California Business Portal relating to Successor-
7 in-Interest concerning Truman Capote.

8 10. Attached hereto as Exhibit I is a true and correct copy of a web
9 page printed from the New York Times online:
10 [http://topics.nytimes.com/top/reference/timestopics/people/c/truman_capote/ind](http://topics.nytimes.com/top/reference/timestopics/people/c/truman_capote/index.html?query=SCHWARTZ,%20ALAN%20U&field=per&match=exact)
11 [ex.html?query=SCHWARTZ,%20ALAN%20U&field=per&match=exact](http://topics.nytimes.com/top/reference/timestopics/people/c/truman_capote/index.html?query=SCHWARTZ,%20ALAN%20U&field=per&match=exact) that
12 claims that Alan U. Schwartz was a longtime friend of Mr. Capote's and his
13 literary executor.

14 11. Attached hereto as Exhibit J is a true and correct copy of web
15 pages printed from: http://www.ss.ca.gov/cgi-bin/sii_search.cgi on the
16 California Secretary of State's California Business Portal relating to Successor-
17 in-Interest concerning Al Jolson. There are eighteen different claimants
18 (charities, universities, and civic organizations) each claiming to have received
19 a 5.555% interest in Mr. Jolson's statutory posthumous right of publicity by
20 will. According to the web page, Mr. Jolson's date of death was October 23,
21 1950.

22 //


23 //

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1 I declare under the penalty of perjury under the laws of the United States that
2 the foregoing is true and correct and that this declaration was executed on the 18th day
3 of December, 2006, at Los Angeles, California.

4
5 

6 AMNON Z. SIEGEL

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Exhibit A

MARILYN MONROE

says,

"Yes, I use
Lustre-Creme Shampoo"

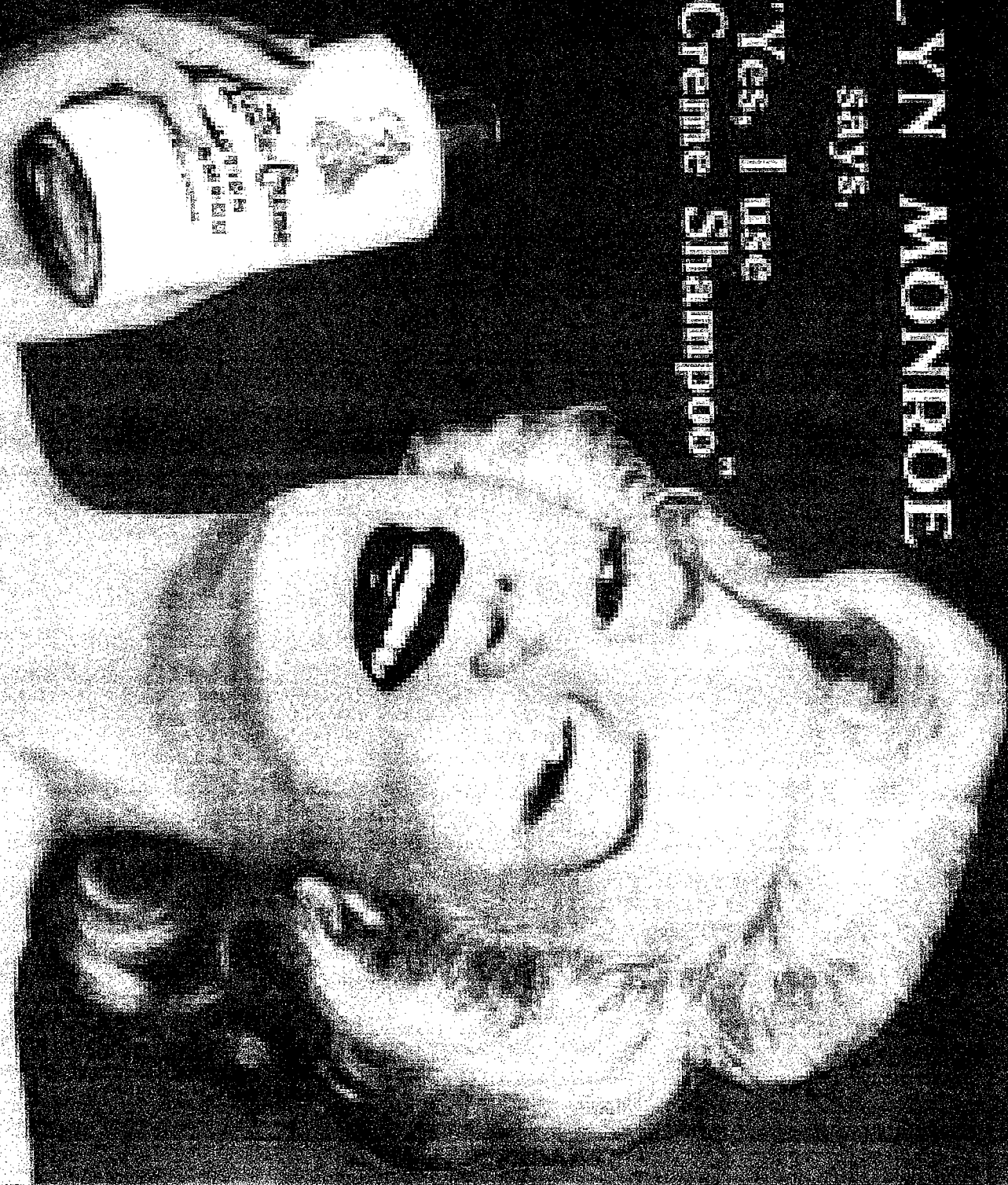


Exhibit B



Exhibit C

"Their designs
have a simple
elegance
I just adore!"

Marilyn Monroe

LAI Jewelers

Malibu • New York • London

Exhibit D

LEGISLATIVE INTENT SERVICE

712 Main Street, Woodland, CA 95695
(916) 666-1917 • (916) 441-7959 • Cable: Deadcat

October 19, 1989

Ms. Kelli L. Sager
GIBSON, DUNN & CRUTCHER
333 South Grand Avenue
Los Angeles, California 90071

Re: Civil Code Section 990
as added by Chapter 1704, Statutes of 1984; and
Civil Code Section 3344
as added by Chapter 1595, Statutes of 1971 and
as amended by Chapter 1704, Statutes of 1984

Dear Ms. Sager:

Pursuant to your request for the legislative history of the above-referenced code sections, please find enclosed the following:

1. All versions of Assembly Bill 826 (Vasconcellos-1971);
2. Excerpt regarding Assembly Bill 826 from the 1971 Assembly Final History;
3. Two analyses of Assembly Bill 826 prepared for the Assembly Committee on Judiciary;
4. Analysis of Assembly Bill 826 prepared for the Senate Committee on Judiciary;
5. Document regarding Assembly Bill 826 from the legislative bill file of the Senate Committee on Judiciary;
6. Material regarding Assembly Bill 826 from the legislative bill file of Assemblyman John Vasconcellos;
7. Post-enrollment documents regarding Assembly Bill 826;
8. Material regarding Assembly Bill 826 from the file of the Legislative Representative of the State Bar of California;
9. "Commercial Appropriation of an Individual's Name, Photograph or Likeness: A New Remedy for Californians," excerpted from the Pacific Law Journal, Volume 3, 1972;

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October 19, 1989
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10. All versions of Senate Bill 613 (Campbell-1984);
11. Excerpt regarding Senate Bill 613 from the 1983-84 Senate Final History;
12. Analysis of Senate Bill 613 prepared for the Senate Committee on Judiciary;
13. Material regarding Senate Bill 613 from the legislative bill file of the Senate Committee on Judiciary;
14. Analysis of Senate Bill 613 prepared by the Legislative Analyst;
15. Two Consent analyses of Senate Bill 613 prepared by the Senate Democratic Caucus;
16. Material regarding Senate Bill 613 from the legislative bill file of the Senate Democratic Caucus;
17. Third Reading analysis of Senate Bill 613 prepared by the Senate Republican Caucus;
18. Analysis of Senate Bill 613 prepared for the Assembly Committee on Judiciary;
19. Analysis of Senate Bill 613 prepared for the Assembly Committee on Ways and Means;
20. Third Reading analysis of Senate Bill 613 prepared by the Assembly Office of Research;
21. Legislative Counsel's Rule 26.5 analysis of Senate Bill 613;
22. Material regarding Senate Bill 613 from the legislative bill file of Senator William Campbell;
23. Post-enrollment documents regarding Senate Bill 613 - (Governor Deukmejian's legislative bill files are under restricted access and are not available to the public).

Civil Code Section 3344 was added in 1971 following legislative passage of Assembly Bill 826. (See Exhibit #1) Assemblyman John Vasconcellos authored this legislation, apparently at the request of individuals whose names were used in connection with a magazine advertising scheme. (See Exhibit #5) Assembly Bill 826 was heard by the Assembly and Senate Committees on Judiciary before being passed by both Houses receiving only one "No" vote. (See Exhibits #3, #4, and #7, document PE-1) Former Governor Ronald Reagan signed the measure after which it was sent to the Secretary of State where it became Chapter 1595 of the Statutes of 1971. (See Exhibits #1f and #2)

Prior to the addition of Civil Code Section 3344, manufacturers and retailers would use an individual's name or likeness for commercial purposes without their consent. Unless their name had an ascertainable commercial value, they were without an effective legal remedy. The purpose of Assembly Bill 826 was to provide a

Ms. Kelli L. Sager
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remedy to these individuals by establishing minimum civil damages in suits commenced by them for usage of their name, photograph, or likeness for such purposes without their consent. (See Exhibits #3, #4, page 3, #6, documents A-2 and A-4, and #7, document PE-4). The evidence suggests that the California statute was modeled after comparable statutes of other states, particularly New York, Virginia, Oklahoma, and Utah. (See Exhibits #3a, #6, documents A-4 and A-5, and #9)

Civil Code Section 3344 was amended and Civil Code Section 990 added in 1984 by the legislative passage of Senate Bill 613. (See Exhibit #10) Senate Bill 613 was introduced by Senator William Campbell and supported by the Screen Actors Guild and the heirs of certain celebrities. (See Exhibits #10 and #15) In the Senate, the bill was heard in the Judiciary Committee. (See Exhibit #12) While before the Assembly, Senate Bill 613 was heard in the Assembly Committee on Judiciary and the Assembly Committee on Ways and Means. (See Exhibits #18 and #19) After passage in both Houses, the measure was approved by Governor Deukmejian on September 30, 1984, and chaptered on that date by the Secretary of State as Chapter 1704 of the Statutes of 1984. (See Exhibits #10j and #11)

Senate Bill 613 extended the law regarding the unauthorized use of a person's name, photograph, and likeness to include a person's voice or signature and prohibited unauthorized use for the purpose of selling goods or providing services. Damages were increased from \$300.00 per prohibited use to the greater of \$750.00 or the actual damages, and included in the recovery any profits from the unauthorized use that were attributable to the use and not considered in computing the actual damages. Punitive damages and the recovery of attorney's fees and costs were also provided for in the bill.

I direct your attention to a letter dated November 8, 1977, from the Legislative Counsel to the Honorable John Vasconcellos wherein the question "Does Section 3344 of the Civil Code authorize a person to receive a minimum recovery of \$300 per prohibited use of another person's likeness without consent?" is addressed. (See Exhibit #6, documents A-12 through A-14) It seems that this analysis may be of assistance to you with respect to understanding how damages are computed under the section.

Any analysis provided is based upon the nature and extent of your request to us, as well as our brief review of the enclosed documents. As such, it must be considered tentative in nature. A more conclusive statement of the impact of the legislative history in your case would be dependent upon a complete understanding of all of the factual issues involved and the

Ms. Kelli L. Sager
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applicable legal principles. You may wish to involve us to this greater extent in order to utilize our skills as expert witnesses in your case. We have had extensive experience in presenting legislative documents to the courts in this role. (Please see Follow-up Services.)

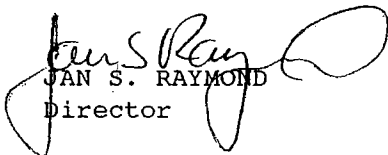
If you do desire to retain our firm in this capacity, a retainer will be required. The size of the fee will depend upon the complexity of the matter and length of time the additional work is estimated to require. Please note that your decision to retain us should be made at the earliest possible opportunity as our present policy is to continue to furnish materials such as those enclosed to all attorneys requesting them, regardless of whether or not another attorney may be involved in the same or a similar case as yours. Once a retainer commitment is made, however, none of the enclosed materials will be voluntarily released to a competing party without first checking with you and determining your position. (Please see our policies statement at the front of this package and the follow-up services indicated which follow.)

Evidence of legislative intent is relied upon in both federal and state courts. For example, in California authority for submission of the enclosed documents to the court as evidence may be found in California Code of Civil Procedure Section 1859. Furthermore, California courts are authorized to take judicial notice of evidence of legislative intent pursuant to California Evidence Code Section 452(c). (See Post v. Prati, 90 Cal. App. 3d 626) In addition to the materials already mentioned, points and authorities on statutory and case law authority for the use of legislative documents are included in the package.

I appreciate the opportunity to provide this assistance and hope that these efforts will be of value to you.

Very truly yours,

LEGISLATIVE INTENT SERVICE


JAN S. RAYMOND
Director

JSR:sas
Enclosures
981472:JSR/DB
CC 990 & 3344
CC33

DISTRICT OFFICE
1661 HANOVER ROAD, SUITE 203
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CHIEF OF STAFF

California Legislature



VICE CHAIRMAN
HEALTH AND WELFARE
CHAIRMAN, JOINT COMMITTEE ON
FIRE, POLICE, EMERGENCY AND
DISASTER SERVICES
JOINT LEGISLATIVE BUDGET COMMITTEE
CHAIRMAN, SELECT COMMITTEE
ON BUSINESS DEVELOPMENT

KAREN L. SMITH
DISTRICT COORDINATOR

SENATOR
WILLIAM CAMPBELL

March 5, 1984

Anne R. Grupp, Esq.
Motion Picture Association of America
14144 Ventura Boulevard
Sherman Oaks, California 91423

Re: Senate Bill 613

Dear Ms. Grupp:

I am writing in response to your memorandum dated July 22, 1983, to the Assembly Judiciary Committee regarding my proposed right of publicity legislation. We have considered your comments in revising Senate Bill 613, and I would like to take this opportunity to address the specific concerns raised in your memorandum. A copy of the revised bill and a supporting memorandum are enclosed for your information.

1. The vague language you referred to ("any other commercial purpose for which consent is required under the common law") has been deleted from SB 613. The revised bill more closely conforms to the language enacted as Civil Code §3344.

Senate Bill 613 has taken great care to provide protection to dead persons to the same extent provided for living persons. Therefore, a biographical drama regarding a deceased person could be produced under the same circumstances as with respect to a living person. In fact, SB 613 adopts the philosophy of the concurrence by Chief Justice Bird in a case directly on point regarding a fictionalized version of Rudolph Valentino's life, Guglielmi v. Spelling-Goldberg Productions, 25 Cal. 3d 860, 603 P. 2d 454, 160 Cal. Rptr. 352 (1979), and the dissent in the

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related case, Lugosi v. Universal Pictures, 25 Cal. 3d 813, 603 P. 2d 425, 160 Cal. Rptr. 323 (1970). In the Valentino case, the concurrence noted that other courts had balanced the right of publicity with expressive activities (as distinguished from more purely commercial activities such as the use of a likeness on an item of merchandise) and stated: "Whether the publication involved was factual and biographical or fictional, the right of publicity has not been held to outweigh the value of free expression". §3344 cannot, and is not intended to, supersede the First Amendment.

2. Subsection (d) of §3344 remains unchanged from the enacted language except as required to conform to the new subsection (a). Presumably, §3344(d) has not caused problems.

3. One of the important clarifications of the law that SB 613 provides is the express recognition of the transferability of the right of publicity by contract. Therefore, SB 613 would cause the rights of publicity exclusively granted to any motion picture producer during an actor's lifetime to remain enforceable for 50 years after the actor's death as against any unauthorized third parties. Thus, SB 613 promotes, and does not restrict, the business of legitimate holders of rights in motion picture posters.

4. Rather than rely on the laws of intestate succession in cases where a person does not transfer his or her right of publicity during life by contract, will or trust, the revised SB 613 establishes a residuary class of limited number. A majority of the class can exercise the deceased person's right, obviating the need for unanimity. The revised version of the bill also shortens the term of protection to life plus 50 years (rather than life plus 100 years as passed by the Senate). Also, an exculpatory clause has been added that excuses innocent infringers who make reasonable efforts to locate owners of decedents' rights.

5. California law regarding the descendibility of the right of publicity is currently in a confused state. Although in the Valentino case, the California Supreme Court cited its ruling in Lugosi for the proposition that the right of publicity is not descendible, the Lugosi case is susceptible of being interpreted to mean that the right of publicity is descendible if the person exercised the right during his or her lifetime. Indeed, other courts and commentators have interpreted California law under the Valentino and Lugosi cases and have been unable to decide [in

Anne R. Grupp, Esq.
Page three
March 5, 1984

Groucho Marx Productions v. Day and Night Co., 689 F.2d 317 (2d Cir. 1981)) or have decided for descendibility in spite of the Valentino case [in Acme Circus Operating Co., Inc. v. Kuperstock, 711 F.2d 1538 (11th Cir. 1983))]. It is this ambiguity that SB 613 seeks to eliminate.

I hope and trust that you will no longer perceive a need to oppose the passage of SB 613. Other states have statutes and case law recognizing perpetual descendibility for the right of publicity. The balanced approach of SB 613 could serve as a model for the rest of the country in clarifying a confusing area of law, if the bill is enacted.

I would be happy to arrange a meeting between you and me, or our respective representatives, if you are still concerned.

Sincerely,

WILLIAM CAMPBELL

WC:cjr

cc: Assembly Judiciary Committee Members

RIGHT OF PUBLICITY - SENATE BILL 613

In general, the right of publicity is the exclusive right of a person to authorize the use of his or her name or likeness in connection with commercial undertakings. The California legislature enacted Civil Code § 3344 in 1971, codifying the right of publicity and according statutory recognition to the previous common law evolution of that right.

California case law

In two recent decisions, the Lugosi and Valentino cases [Lugosi v. Universal Pictures, 25 Cal.3d 813, 603 P.2d 425, 160 Cal. Rptr. 323 (1979), and Guglielmi v. Spelling-Goldberg Productions, 25 Cal.3d 860, 603 P.2d 454, 160 Cal. Rptr. 352 (1979), respectively], the California Supreme Court considered the extent to which the right of publicity is descendible in California. These cases were among the first in the nation to address this question. Unfortunately, the result of these two cases is complete confusion as to the descendibility of the right in California.

The decision in the Valentino case was a very brief opinion stating that "the right of publicity protects against the unauthorized use of one man's name, likeness or person-ality, but that the right is not descendible and expires upon the death of the person so protected." The quoted language purported to be a synopsis of the Lugosi decision; however, a reading of the Lugosi opinion demonstrates that the holding in that case was much narrower than the Valentino opinion indicates.

The Court certainly held in Lugosi that if a person does not exploit his or her right of publicity during his or her lifetime, then the right terminates upon death. The inference can be drawn from the holding and the extensive discussion in the opinion that the right of publicity is descendible if someone exploits it during his or her lifetime. A contrary conclusion would make most of the opinion irrelevant. But the Lugosi opinion is not clear with respect to the breadth of descendibility if the right has been exploited during life. For example, under Lugosi, if a football player licenses the right to use his likeness on posters, it is unclear if the right descends for all merchandise, all artwork, only posters, or some other category of goods.

In summary, the law in California with respect to the descendibility of the right of publicity is one of the following: (1) the right does not descend, whether or not exploited during the person's lifetime; (2) the right descends in gross if it is exploited during the person's lifetime; or (3) the right descends if it is exploited during the person's lifetime, but only with respect to the types of exploitation engaged in by the person during his or her lifetime.

Two courts outside California subsequently have had the occasion to construe California law on this matter. In Groucho Marx Productions v. Day and Night Co., 689 F.2d 317 (2d Cir. 1982), the Second Circuit could not decide under California law whether the right of publicity terminates upon the death of the person or descends with respect to the types of exploitation exercised during the person's life. In Acme Circus Operating Co., Inc. v. Kuperstock, 711 F.2d 1538 (11th Cir. 1983) the Eleventh Circuit interpreted Lugosi to mean that "where the right of publicity of a name has been exercised in conjunction with a specific product or business during a lifetime sufficiently to create a secondary meaning in that name and the right to use that name in conjunction with the same product or business has been validly assigned to another, the rights flowing therefrom survive the death of the assignor." The court reasoned: "We reject the possibility that the publicity interest never survives because such a strict interpretation would mean that much of the Lugosi majority opinion is pure dicta and surplusage ... [and] undermines the logical framework of the majority opinion." However, this interpretation is not binding in California, and no California court has settled the confusion.

The law in other states

The question of the descendibility of the right of publicity has been addressed in other jurisdictions judicially and legislatively. The overwhelming trend is for the right to descend. Of the states with right of publicity statutes that expressly address descendibility (namely, Florida, Nebraska, Oklahoma, Utah and Virginia) all provide for descendibility. Other states, most notably New York, Georgia and New Jersey, have case law supporting descendibility [Price v. Hal Roach Studios, Inc., 400 F.Supp. 836 (S.D.N.Y. 1975), Factors Etc., Inc. v. Pro Arts, Inc., 579 F.2d 215 (2d Cir. 1978), Hicks v. Casablanca Records, 464 F.Supp. 426 (S.D.N.Y. 1978), Groucho Marx Productions v. Day and Night Co., 523 F.Supp. 487 (S.D.N.Y. 1981), rev'd on other grounds 689 F.2d 317 (2d Cir. 1982); Martin Luther King, Jr., Center for Social Change, Inc. v. American Heri-

tage Products, Inc., 694 F.2d 674 (11th Cir. 1983), incorporating opinion of Georgia Supreme Court, 250 Ga. 135, 296 S.E.2d 697 (1982); Estate of Presley v. Russen, 513 F.Supp. 1339 (D.N.J. 1981)]. Virtually all legal scholars, such as the distinguished copyright expert Melville Nimmer at U.C.L.A., advocate descendibility. However, some states may deny descendibility or have confusing case law [interpreting Illinois law, the Seventh Circuit denied descendibility in Maritote v. Desilu Productions, Inc., 345 F.2d 418 (1965); interpreting Ohio law, the District Court held the right not descendible in Reeves v. United Artists, 572 F.Supp. 1231 (N.D. Ohio 1983); with respect to Tennessee law, compare the following cases: Memphis Development Foundation v. Factors Etc., Inc., 616 F.2d 956 (6th Cir. 1980) (not descendible), Commerce Union Bank v. Coors of the Cumberland, Inc., 7 Med.L.Rptr. 2204 (No. 81-1252-III, Tenn. Ch. 1981) (descendible), Lancaster v. Factors Etc., Inc., 9 Med.L.Rptr. 1109 (No. 88927-2, Tenn. Ch. 1982) (not descendible)].

What law governs?

What makes the confusion in California even more disturbing is that, under choice of law rulings, California law may be applied throughout the country when the right of publicity of a California resident is at issue. The Groucho Marx case cited above is an example. In that case, the District Court had ruled that under New York law the right of publicity is descendible. The Second Circuit reversed, however, on the basis that California law, not New York law, governs, principally because the Marx Brothers were California residents, despite the fact that the alleged infringement had occurred in New York. In addition, the court noted that some of the brothers had entered into contractual arrangements relating to their publicity rights in California.

Reasons for descendibility

Because recent case law, such as the Marx Brothers case, suggests that the governing law in right of publicity cases will generally be that of the domicile of the individual whose name or likeness is involved, the confusion over descendibility under California law will have consequences beyond its borders. California has traditionally encouraged the entertainment industry and other areas of personal achievement. The promotion of such industries has resulted in California's status as the principal location of the entertainment industry in the United States and the state of residence of many prominent entertainers. Because of this, California has derived